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SEP 26 1983
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NO. 83-227

IN THE

Supreme Court Of The United States

October Term, 1983

LESLIE B. SCHLANSKY, ... Petitioner,

V.

UNITED STATES OF AMERICA and JOSEPH R. SANDEFUR, SPECIAL AGENT, INTERNAL REVENUE SERVICE, ... Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED IN PETITION FOR WRIT OF CERTIORARI

DOES THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES PROTECT AN INDIVIDUAL FROM THE PERSONAL COMPULSORY PRODUCTION OF HIS OWN DOCUMENTS, WHILE POSSESSED BY HIM, TO THE INTERNAL REVENUE SERVICE AS COMMANDED IN AN ADMINISTRATIVE SUMMONS?

AUTHORITY FOR AND PURPOSE OF SUPPLEMENTAL BRIEF

This supplemental brief is filed pursuant to Supreme Court Rule 22.6 for the purpose of calling attention to a new case not available at the time of the filing of the petition for writ of certiorari.

DISCUSSION OF SUPPLEMENTAL CASE

The new case to which Petitioner would direct the attention of the Court is *United States* v. *Porter*, _____ F.2d _____, 52 AFTR 2d 83-5511 (7th Cir., decided July 6, 1983; published August 4, 1983).

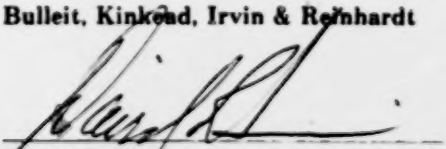
The operative facts involved in *Porter* are substantially identical to those of the instant case. The taxpayer, one Beligratis, was commanded by an Internal Revenue Service administrative summons to produce his own business records, including cancelled checks and deposit tickets, all as in the instant case. The United States Court of Appeals for the Seventh Circuit reached a conclusion diametrically opposed to the ruling of the Sixth Circuit below, and held that the act of production of Beligratis' cancelled checks and deposit slips results in compelled testimony protected by the Fifth Amendment. Thus, the conflict among the Courts of Appeal is now even more direct and exhibits even greater confusion in the aftermath of *Fisher* v. *United States*, 425 U.S. 391 (1976) than as described in the petition for writ of certiorari.

CONCLUSION

Just as the Fifth Amendment privilege against compelled self-incrimination is too fundamental that its scope and availability should rest upon something as arbitrary as winning the race for certiorari [see *In re Grand Jury Empanelled March 19, 1980*, 680 F.2d 327 (3d Cir., 1982), *cert. granted sub nom. United States* v. *Doe*, 82-786 April 22, 1983, 51 U.S.L.W. 3789 (U.S. May 2, 1983)], so should its scope and availability not rest upon something as arbitrary as whether the taxpayer resides in Chicago, Illinois or Lexington, Kentucky. Accordingly, Petitioner respectfully prays that the subject petition for writ of certiorari, as supplemented by this brief, be granted.

Respectfully submitted,

Bulleit, Kinkead, Irvin & Reinhardt



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